



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 32 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the legal name of the landlord. Both parties agreed to this amendment during the hearing.

Preliminary Issue – Jurisdiction to hear Matter

At the outset of the hearing, both parties raised the issue of jurisdiction. The landlord claimed that this tenancy was not governed by the *Act*, because it was excluded by section 4(c). The landlord stated that she and her mother, who are both owners of the rental unit, have shared a kitchen and bathroom with the tenant during this tenancy. The tenant disputed that this tenancy was excluded by the *Act*, claiming that she did not share a kitchen or bathroom with the landlord or her mother.

The landlord confirmed that she and her mother are the owners of the rental property, which is a house, and the rental unit is one bedroom inside the house. She stated that she and her mother occupy bedrooms inside the house, while the tenant occupies one bedroom. She said that there were two other roommates living in the rental property with them. She explained that she verbally told the tenant at the beginning of the tenancy that the landlord and her mother would be sharing the rental property with the tenant. She confirmed that the two tenancy agreements signed by the tenant indicate that the tenant only rents one bedroom, not the entire house, and the landlord and her mother would be living in the house with the tenant and sharing the kitchen and bathroom. She claimed that between March and June 2019, the landlord and her mother were living at the rental property at least once per month and sharing the kitchen and bathroom with the tenant. She maintained that from July 1 to 22, 2019, the landlord and her mother were living full time at the rental property and sharing the kitchen and bathroom with the tenant. She stated that at the end of July 2019, she went to China in order to deal with a family emergency and she is still there, due to this issue. She testified that her mother has always lived at the rental unit from 2017 to 2019 but her mother came to stay with the landlord at her own condominium, in order to spend more time with the landlord.

The tenant disputes that the landlord and her mother live at the rental property and share the kitchen and bathroom with her. She claimed that the landlord has her own condominium and lives there. She maintained that the landlord's mother has never lived at the rental property. She confirmed that the landlord and her mother unexpectedly stayed overnight at the rental property in May, June and July 2019 and it made her uncomfortable. She stated that this was not living at the house, it was just using the house to host guests. She explained that the landlord and her mother use the empty rooms that are not rented. She said that she was not told verbally by the landlord that she would be living at the rental unit at the beginning of this tenancy. She claimed that the first tenancy agreement she signed does not indicate that the landlord is

sharing the rental unit with her, even though it states that she only has one bedroom, since she shares the house with other roommates. She testified that she signed a second tenancy agreement in July 2019, because the landlord threatened to evict her, and she did not know her rights. She agreed that the second tenancy agreement states that she shares the house with the landlord and the landlord's mother, but she said that they live in China now and were staying at the tenant's condominium before. She said that the landlord failed to provide proof of hers or her mother's address. She maintained that she filed this application to restrict the landlord's right to enter the house because she is worried that the landlord might stay there on weekends, when she returns from China.

Both parties confirmed that they attended a previous RTB hearing on November 8, 2019, after which a decision of the same date was issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. Both parties agreed that the issue of jurisdiction was discussed but no decision was made regarding it and the application was dismissed, without any findings made.

Analysis

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation...

It is undisputed that the landlord owns the rental unit, along with her co-owner mother. I find that the landlord proved, on a balance of probabilities, that she and her mother have shared the same kitchen and bathroom in the same living accommodation with the tenant during this tenancy.

I find that the landlord and her mother are not required to live full-time at the rental property in order to share the kitchen and bathroom with the tenant. The landlord and her mother stayed overnight at least three times at the rental property, in May, June and July 2019, according to the tenant. I accept the landlord's testimony that she and her mother used the kitchen and bathroom at the rental property while they were staying there, which were shared spaces with the tenant. Even if the landlord and her mother stayed at another residence during this tenancy and even if they are in China at the

present date, they were still using the kitchen and bathroom at the rental property, during this tenancy.

I further find that the tenant filed this application in order to prevent the landlord and her mother from further accessing the rental property because it happened before. The tenant acknowledged that she did not want to share the same space with the landlord or her mother because it made her uncomfortable. The tenant agreed that she signed the first tenancy agreement, which indicates that the rental unit is only one bedroom inside the rental property, not the entire house. The tenant agreed that she signed the second tenancy agreement, which indicates that she shares the rental property, including the kitchen and bathroom with the landlord. Even though the tenant claims that she did not know her legal rights, ignorance of the law is no excuse. I find that the previous RTB hearing did not make any findings regarding jurisdiction, as acknowledged by both parties.

The *Act* specifically excludes the owner of a rental unit who shares a kitchen and bathroom with the tenant. Accordingly, I find that I am without jurisdiction to consider the tenant's application because it is excluded by section 4(c) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the Residential Tenancy Branch. Accordingly, I decline jurisdiction over the tenant's application.

Conclusion

I decline jurisdiction over the tenant's application. I make no determination on the merits of the tenant's application. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 21, 2020